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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ERIC CHAN,

Plaintiff,

-against-

HEATHER SCHATZ,

Defendant.

Case No:

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Eric Chan, by and through his undersigned attorneys, for his Complaint against Defendant Heather Schatz, states as follows, on knowledge as to himself and on information and belief as to all other matters, which are likely to have evidentiary support after a reasonable opportunity for discovery:

NATURE OF THE ACTION

1. Eric Chan is a well-known visual artist. Early in his artistic career, Eric developed a method of creating abstract forms, from which over the last 30 years he has created a prolific body of artwork consisting of thousands of abstract artworks. His work, which incorporates traditional and digital techniques, has been exhibited in prominent museums and galleries across the United States and internationally, and the market for his work is robust.

2. After marrying Heather Schatz in 1992, Eric and his wife used the name “Chan Schatz” or “ChanSchatz” (combining their respective surnames) for professional purposes. Eric worked full-time in his art studio, and Heather worked full-time as an office manager for an architecture firm. Around that same time, in addition to her full-time employment, Heather provided assistance to Eric in his art studio. For example, she performed administrative tasks in the studio, including invoicing artwork sales, managing bank accounts, managing and working with studio assistants, and attending meetings.

3. Heather, herself an artist, also contributed to Eric’s artistic process by offering ideas and other artistic suggestions. Accordingly, Eric agreed to publicly present his works as a collaborative effort with Heather under the single name, ChanSchatz.

4. At all times, however, notwithstanding Eric’s use of the “ChanSchatz” name and the fact that Heather rendered some assistance in the form of ideas and suggestions, her contributions were not themselves fixed independent creative expressions, and Eric never intended that Heather would be his co-author, and at all times he was—and he intended to remain—the sole decision-maker with regard to the creation of his works. A list of Eric’s artworks (the “Chan Works”), of which he is the sole author, is attached to this complaint as Exhibit A.

5. The parties are now divorcing. Seeking to maximize her portion of the divisible marital property, Heather is trying to share the fruits of Eric’s efforts by claiming that she was his “co-author.” Accordingly, there is a real and justiciable controversy concerning whether Heather’s contributions to Eric’s work entitle her “joint author” status.

6. To ensure that after the dissolution of their marriage Eric will maintain exclusive control over his works, including his singular ability to create derivative works from his existing

body of work, it is critical that a judgment be entered declaring that Eric is the sole author of his works, and that Defendant is not his co-author.

7. Eric has filed this action seeking a declaration that he is the sole author of the Chan Works, and therefore that he alone owns all attendant intellectual-property rights, including under federal Copyright law, 17 U.S.C. § 101 *et seq.*

PARTIES, JURISDICTION, AND VENUE

8. Plaintiff Eric Chan is a prolific and well-known visual artist domiciled in New York, New York.

9. Defendant Heather Schatz is Plaintiff's wife. She has resided in New York since 1996, until relocating temporarily to Wisconsin in 2014. Plaintiff and Defendant are in the process of divorcing after twenty-five years of marriage. *See Chan v. Schatz*, No. 311647/2015 (Sup. Ct. N.Y. Co.).

10. This Court has personal jurisdiction over the Defendant because she has transacted business within the State of New York, including in connection with all the works created in New York that are at issue in this lawsuit.

11. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) because Plaintiff seeks a declaration concerning his intellectual-property rights under federal law.

12. Venue in this District is proper under 28 U.S.C § 1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here. Among other things, the parties resided for 18 years in New York, New York, and virtually all the works at issue in this dispute were created and/or are currently located in New York, where Plaintiff continues to work as an artist.

STATEMENT OF FACTS

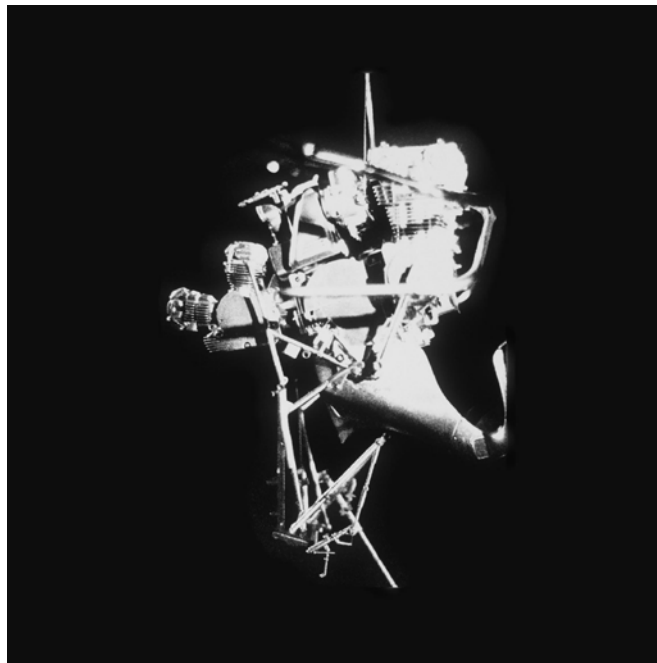
Eric Alone Creates the Seminal Piece for His Body of Work

13. Plaintiff Eric Chan has studied and created art for over three decades. Eric studied architecture at the University of California at Berkeley, where he graduated in 1986 and was selected from a pool of hundreds of students to win the university's Eisner Prize in architecture, and was recognized for his excellence in drawing and design artistry.

14. While Eric was completing his undergraduate studies, a faculty panel awarded Eric an internship as an architectural designer at Skidmore, Owings, & Merrill LLP, a prominent architecture and design firm in San Francisco.

15. In 1987, Eric enrolled in graduate studies at the Architectural Association in London, England.

16. In 1987, as part of his coursework at the Architectural Association, Eric created three-dimensional sculptural works of art, among them a sculpture that Eric named *Touchstones TS.0001*, or the "Touchstone." The "Touchstones" are listed on Exhibit A, page 69.



17. Eric is, and at all times intended to remain, the sole author of the “Touchstone,” and no one other than Eric contributed any fixed independent creative expression to the “Touchstone.”

Eric Uses the “Touchstone” to Develop the Next Phase of His Body of Work

18. Inspired by the form of the “Touchstone,” in 1988 Eric utilized photographic methods to develop two-dimensional works of art based on the sculpture. Specifically, Eric photographed the “Touchstone,” and then he developed, photocopied, and processed the resulting photographs on acetate and photographic paper, creating a work consisting of one acetate layer and one paper layer.

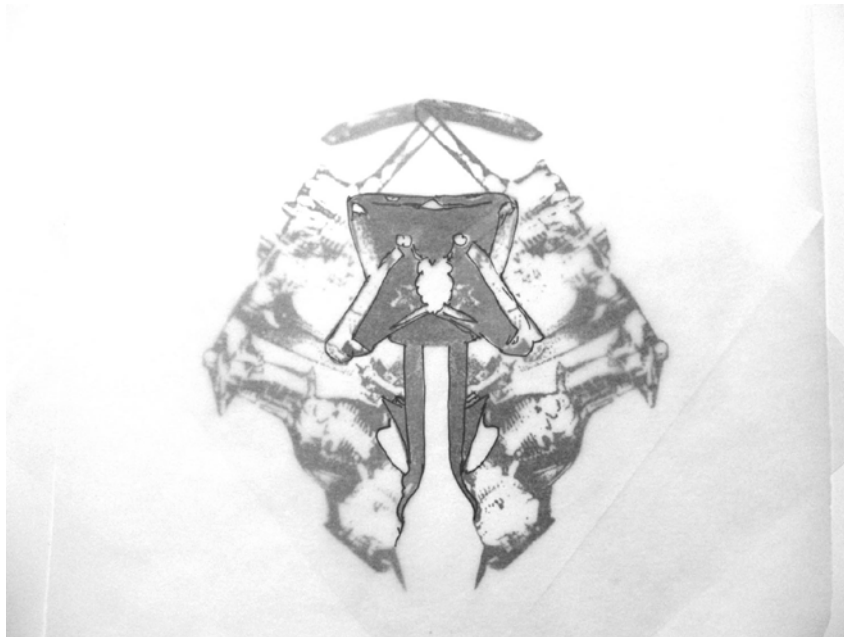
19. By layering these two processed images together, Eric created a new form for his artworks, and created a series of these works that he named “Montage Acetates.” The “Montage Acetates” are listed on Exhibit A, page 13.



20. Eric is, and at all times intended to remain, the sole author of every “Montage Acetate” work, and no one other than Eric contributed any fixed independent creative expression to the “Montage Acetates.”

Eric Creates A Second Touchstone Sculpture, A Second Set of Montage Acetates, and Several Series of “Process Drawings”

21. During his time at the Architectural Association, Eric continued to work with the “Montage Acetates,” and developed a third type of art form, the “Process Drawings,” by hand drawing in ink and on overlaid paper on a single “Montage Acetate” artwork several times at varying angles. Eric alone created each “Process Drawing,” employing the combination of traced shapes to create a new artwork on paper, based on the form of one of the “Montage Acetates,” which are in turn based on the “Touchstone.”



22. Eric is, and at all times intended to remain, the sole author of every “Process Drawing,” and no one other than Eric contributed any fixed independent creative expression to the “Process Drawings.”

23. In 1989, Eric completed his coursework at the Architectural Association, and then gained admission to the Southern California Institute of Architecture (“SCI-Arc”).

24. While attending SCI-Arc in 1989, Eric alone created a second “Touchstone” sculpture titled *Touchstones TS.0002*, and he used the same method he had developed in London to create a second set of “Montage Acetates” based on this second “Touchstone.” Eric is, and at all times intended to remain, the sole author of the second “Touchstone” and the second set of “Montage Acetates,” and no one other than Eric contributed any fixed independent creative expression to the second “Touchstone” or the second set of “Montage Acetates.”

25. From this second set of “Montage Acetates,” Eric created many more “Process Drawings.” Eric created thousands of “Process Drawings” in 1989 and 1990, and began grouping these works into series (the “Process Drawing Series”). The “Process Drawing Series” are listed on Exhibit A, pages 64-68.

26. In 1991, Eric transferred from SCI-Arc to the University of Southern California (“USC”) to complete a Master’s degree in Architecture. During his coursework at USC, Eric used his “Process Drawings” as the foundation for other works, including murals and three-dimensional sculptures. Eric alone created all the works made in connection with his coursework as a student at USC, and no one other than Eric contributed any fixed independent creative expression to those works. For example, Eric alone used several of his “Process Drawings” as a basis to design architectural forms and artworks in connection with and as part of his coursework at USC. These “Architectures” are listed on Exhibit A, page 1.

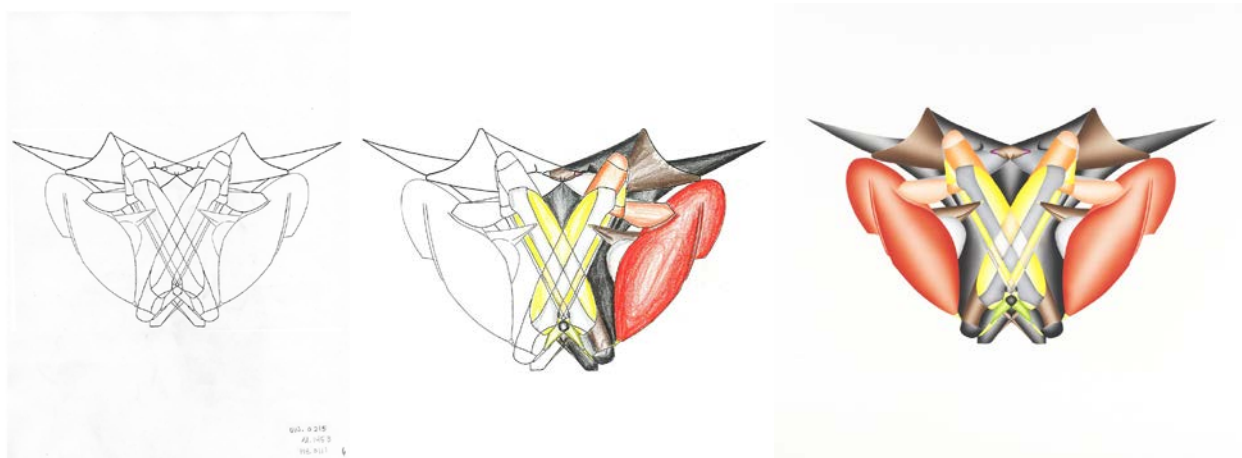
27. Eric’s numerous “Process Drawings,” based on the “Montage Acetates” and the “Touchstones,” comprise a repository of images from which Eric derives new works of art. These “Process Drawings” function as building blocks or “DNA” for Eric’s subsequent body of

work. Eric uses these images as an artistic vocabulary, which he selects, combines, and incorporates into new artistic works.

28. In 1991, Eric wrote a paper entitled *Process and Methodology of Form-Making and Visualization* (“*Process and Methodology*”), memorializing his artistic process he had solely developed, including the Touchstones, Montage Acetates, and Process Drawings. Eric is, and at all times intended to remain, the sole author of *Process and Methodology*, and no one other than Eric contributed any fixed independent creative expression to his written work.

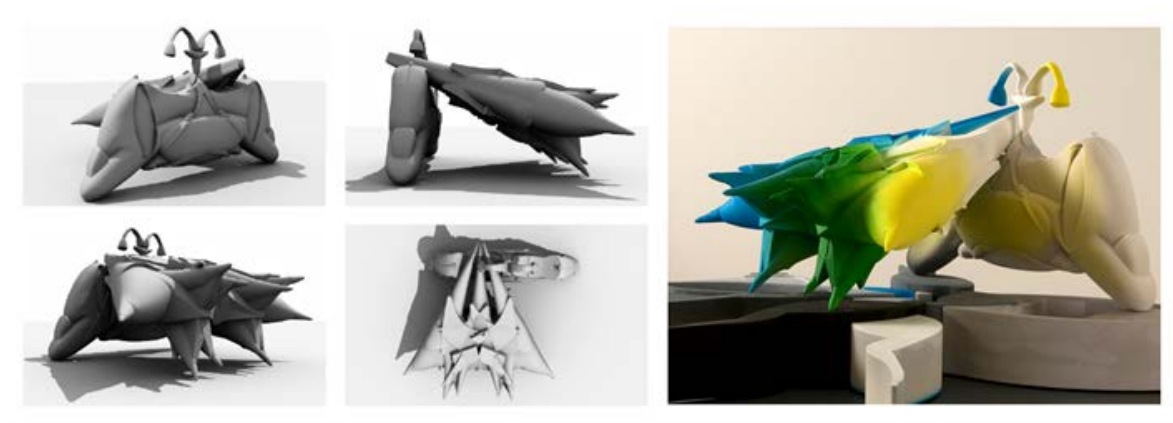
Eric Develops His “Universals” Series

29. In 1992, inspired by a radio story about the United Nations, Eric created a new series of works called the “Universals Compositions.” Using one or several existing “Process Drawings” as a base and foundation, Eric drew and constructed by hand a new “Universals Drawing,” and then used colored pencils to create a “Universals Color Study.” From the “Universals Color Studies,” Eric would then create larger “Universals Paintings,” using hand-painting and air-brushing techniques.



30. Eric continued to create more “Universals” works, and drew approximately 1000 “Universals Drawings.”

31. Eric scanned selected “Universals Drawings,” and in Adobe Illustrator drew by hand over the scanned “Universals Drawings” to create digital works that he called “Digital Drawings.” Eric then imported “Digital Drawings” into three-dimensional modeling software, which Eric used to create a new series of digital works that he called “Universals Sculptures.” Eric alone operated a three-dimensional printer to create three-dimensional sculptures based on the digital files from “Universals Sculptures,” and then Eric, working alone, would hand assemble the physical sculpture. Eric alone chose colors and hand painted the resulting sculpture using air-brushing techniques.



32. Eric alone selected which of his “Process Drawings” to use as the foundation for the “Universals Drawings,” drew the “Universals Drawings,” created and hand colored the “Universals Color Studies,” hand painted or air brushed the “Universals Paintings,” and created the “Universals Sculptures.” In each step of his creative process, Eric alone made every artistic and aesthetic decision as to how the resulting works would appear. The “Universals” series are listed on Exhibit A, pages 70-73. Eric is, and at all times intended to remain, the sole author of the “Universals Drawings,” “Universals Color Studies,” “Universals Paintings,” and “Universals Sculptures,” and no one other than Eric contributed any fixed independent creative expression to

the “Universals Drawings,” “Universals Color Studies,” “Universals Paintings,” or “Universals Sculptures.”

ChanSchatz—A New Name for Eric’s Works

33. Eric and Heather met in 1986, as undergraduate students at the University of California at Berkeley.

34. In 1992, Eric and Heather married and relocated to Santa Barbara, California, where Eric worked as an artist. In Santa Barbara, and previously in Los Angeles, Heather worked full time as an office manager at an architecture firm.

35. By 1996, Eric and Heather had mounted solo exhibitions of his work under the professional name “ChanSchatz” in Santa Barbara. Heather no longer wanted to work as an office administrator.

36. In 1996 Eric and Heather enrolled as full-time students working in separate adjacent studio spaces at Columbia University’s Masters of Fine Arts graduate program. Eric and Heather would often discuss their artworks and share ideas, and Heather sometimes suggested topics and concepts for Eric’s projects. Eric and Heather each paid separate tuition and were awarded separate diplomas from Columbia University.

37. But at all times Eric controlled the artistic expression in his artworks. And Eric alone turned these ideas into fixed and tangible works of art.

38. While at Columbia, Eric continued to develop the series of “Process Drawings,” “Universals Drawings,” “Universals Color Studies,” and “Universals Paintings,” and began to use digital techniques to create new artworks. Working independently, Eric scanned “Process Drawings” and “Universals Drawings,” and used Adobe Illustrator to hand-draw the “Process Drawings” and “Universals Drawings” to create “Digital Drawings.” The “Digital Drawings” series are listed on Exhibit A, page 6. Eric is, and at all times intended to remain, the sole author

of approximately 500 “Digital Drawings,” and no one other than Eric contributed any fixed independent creative expression to the “Digital Drawings.”

39. After graduating from Columbia University, Eric and Heather established a New York based studio under the name “ChanSchatz.”

40. Eric continued to create artworks under the ChanSchatz name. Heather made limited contributions, such as suggesting topics or subject matter, but Eric always controlled the artistic and aesthetic decisions regarding the creation of his works.

41. Eric worked full-time as an artist during the working years of ChanSchatz. From 1998-2013, Heather always held a full-time job outside of the ChanSchatz studio, in various fields such as advertising, teaching, and software consulting. For example, in or around 2003-2013, she worked for the Brady Campaign conducting internet advocacy, database management, and other administrative tasks.

42. While Heather was working full-time away from the studio, Eric controlled the day-to-day operations of ChanSchatz. When Eric needed studio assistance, Eric alone researched and hired vendors and studio assistants to fabricate his works, and Eric alone placed orders and negotiated the pricing of services by vendors and fabricators. Eric, not Heather, created the numbering and cataloging conventions for his oeuvre, and Eric alone decided on the title for all of his works. And Eric, not Heather, initiated and managed communications with third parties, such as museums and institutions mounting ChanSchatz exhibitions. Eric alone decided which museums and institutions to contact, and Eric alone drafted and conducted communications with individuals at those museums and institutions.

43. Eric alone exercised control over how ChanSchatz exhibitions would be presented, including designing and planning how the works would be exhibited in gallery and

museum spaces. Eric alone made and provided to gallery and museum staff blueprints for exhibition layouts and sketches of installation items (such as tables, pedestals, and platforms) used to display works, and in some instances Eric personally constructed these installation items. Eric alone planned, conceived, designed, and created construction drawings and models for every ChanSchatz gallery and museum exhibition. Eric also controlled the content and design of corresponding printed matter for gallery and museum exhibitions, including descriptions of the works, press releases, wall text, books, and pamphlets.

44. In addition to printed matter created in connection with gallery and museum exhibitions, Eric also conceived and created Artist Books. Working alone, Eric selected and compiled copies of his works, including “Montage Acetates,” “Process Drawings,” “Universals,” “Interactive Design Modules,” and “Painting Compositions.” Eric alone selected which works to include, collected and assembled copies of selected works into book format, and created a digital file or physical print copy of each Artist Book. Eric’s Artist Books are listed on Exhibit A, pages 2-5. Eric is, and at all times intended to remain, the sole author of the Artist Books, and no one other than Eric contributed any fixed independent creative expression to the Artist Books.

45. In or around 2002, Eric and Heather embarked upon participatory art projects, where they would invite other artists and individuals to make suggestions regarding the creation of new works. Just as Heather had contributed suggestions for Eric’s projects at Columbia, these guest participants contributed ideas for Eric to incorporate into large-scale works. Eric, working alone, created a series of “Interactive Design Modules,” each comprised of colors, text phrases, and images from an archive of Eric’s prior works (i.e., Eric’s “Process Drawings” and “Universals Drawings”). Heather contributed ideas for the text phrases that might be included on the “Interactive Design Modules,” but Eric alone created the “Interactive Design Modules”

and made all of the creative decisions regarding which colors, phrases, and images would be included on each individual “Interactive Design Module.” Participating guests would select from the “Interactive Design Module” which elements would be included in a final work. Eric alone would determine how these elements would be arranged and incorporated into the final mixed media works, which he titled “Digital System Productions.” The “Interactive Design Modules” are listed on Exhibit A, page 12, and the “Digital System Productions” are listed on Exhibit A, pages 7-10. Eric is, and at all times intended to remain, the sole author of the “Interactive Design Modules” and “Digital System Productions,” and no one other than Eric contributed any fixed independent creative expression to the “Interactive Design Modules” and “Digital System Productions.”

46. Beginning in or about 2002, Eric used this participatory method of using “Interactive Design Modules” submitted by invited guests to create digital files he called “Painting Compositions.” Eric alone would use software to position, scale, and edit the selected colors and images to create the final works which he called “Painting Compositions.” Eric used large-format printers to print the “Painting Compositions” onto fabric. Although guest participants contributed suggestions of text, color, and imagery, Eric alone had ultimate control over how these elements would be arranged and incorporated into the final “Painting Composition.”

47. Eric, working alone, also created derivative works from many of the resulting “Painting Compositions,” by cropping, resizing, and/or recoloring to create new “Painting Compositions” works. Eric also created derivative works from “Painting Compositions” by extending the works into larger murals that he called “Painting Extended Compositions,” as

illustrated below. The “Painting Compositions” and “Painting Extended Compositions” are listed on Exhibit A, pages 15-56.



48. Eric is, and at all times intended to remain, the sole author of all “Painting Compositions” and “Painting Extended Compositions,” and no one other than Eric contributed any fixed independent creative expression to the “Painting Compositions” or “Painting Extended Compositions.”

49. In 2006, Eric created the *Art Project United States* series, including, for example, the “Painting Composition” *PTG.0032 APUS*, with input from American military personnel. Using a web-based “Interactive Design Module,” the military participants chose text phrases, color combinations, and images, which Eric incorporated into “Painting Compositions.”

50. Throughout the following decade, Eric, with Heather’s input, continued to incorporate new themes and target communities in a variety of participatory projects. Participants were drawn from communities including Pennsylvania coal miners, the tenants of 390 Park Avenue in New York, the Merce Cunningham Dance Company, and University of Buffalo neurosurgeons.

51. Eric, with Heather’s input, also used “Interactive Design Modules” abroad, for example, working with communities of revolutionaries in Egypt and human trafficking victims

in Thailand. The resulting works, *Revolution* and *Human Trafficking (Thailand)*, were presented in a solo exhibition at opening of the Westmont Ridley-Tree Museum of Art in Santa Barbara, California in 2011.

52. Aside from the participatory projects, Eric also used his ink-on-paper “Process Drawings” and digital “Digital Drawings” as a foundation to create works in other media, such as clay, ceramics, resin, and fabric. For example, Eric created series of fabric works including scarves, ties, and pillows. Eric alone created these designs based on his existing “Process Drawings,” printed the fabric, and constructed the resulting works. Eric’s works in other media based on his “Process Drawings” are listed on Exhibit A, pages 57-63.



53. Eric also used digital tools and large-format printers to create paintings derived from his own “Digital Drawings.”



54. To create these large-format works, Eric used Adobe Illustrator to select, resize, overlay, and position multiple images from his “Digital Drawings” into a single work. Eric used Illustrator tools to adjust colors, line thickness, and other details in the digital work, and then prepared these digital “Painting Compositions” for large-format printing.

55. Eric also used his “Digital Drawings” as source material for film projects. To create his “Displays” series, Eric used digital tools to layer his “Digital Drawings” images. Then, working alone, Eric used Adobe After Effects software to incorporate the “Displays” visual elements in “Movies,” his digitally animated video works. The “Displays” are listed on Exhibit A, page 11, and the “Movies” are listed on Exhibit A, page 14. Eric is, and at all times intended to remain, the sole author of all “Movies” and “Displays,” and no one other than Eric contributed any fixed independent creative expression to the “Movies” or “Displays.”

56. Eric worked alone, selecting the “Digital Drawings” to use as source material, making every artistic and aesthetic decision as to how the works should appear, and using software to combine and alter the images and create “Movies,” “Displays,” and “Painting

Compositions.” Heather never used the computer or software to create “Digital Drawings,” or any other digital artworks.

57. Often Heather would discuss with Eric what the tone or subject of a new “Painting Composition” might be, but Heather did not make original artistic or aesthetic contributions to the creation of these works. Her input was similar to that provided by guest participants in the participatory series described above, who would select thematic text phrases or particular images to be incorporated into a final work. At most, Heather described to Eric, the sole author, ideas of what a work might look like, and, very infrequently, Heather would give Eric sketches of her ideas. More often, though, Heather would not even know that Eric was creating a new painting, and would not see the work at all until Eric had completed the work. Eric valued Heather’s limited contributions, but Eric remained the sole decision maker about the final fixed, tangible expression of each “Painting Composition.”

58. Eric never intended at the time of the creation of any individual artwork that Heather’s contributions would constitute irremovable and necessary components of the final work. Quite simply, Eric never intended that Heather was, or would be, his co-author.

Eric and Heather End Their Marriage and Their Professional Relationship

59. By 2015, the parties’ personal relationship had deteriorated, and they began the process of ending both their marriage and their professional relationship.¹ In September 2015, Eric commenced matrimonial proceedings in the couple’s long-term home state of New York to obtain a divorce. The division of marital property, including Eric’s intellectual property, will be resolved in the matrimonial proceedings.

¹ In June 2015, Heather had previously filed for divorce in Wisconsin, where the couple and their two children had relocated temporarily in 2014, for a short-term temporary project at the Madison Museum of Contemporary Art.

60. Heather is trying to share the fruits of Eric's efforts at the expense of his intellectual-property rights as sole author of the Chan Works. And in connection with these divorce proceedings, Heather stated her belief that she should be credited as a full co-author of the Chan Works.

61. Eric, the dominant author of ChanSchatz artworks, does not contest that Heather made limited contributions to his works, including her assistance in the studio and her discussions and suggestions of ideas and themes for new artworks. But selection of subject matter and suggestion of ideas for works are not copyrightable contributions. And the ultimate decisions about which suggestions and ideas should be incorporated, and how they should be incorporated, were solely made by Eric. Eric had sole responsibility for the actual expressive content of the Chan Works, Eric alone translated these suggestions into fixed and tangible works of art, and Eric had—and always intended to retain—all decision-making authority regarding the artworks he produced.

62. Heather never claimed to be a joint author for purposes of copyright law until after the parties separated in or about June 2015. Until then, Eric did not, and had no reason to believe that Heather claimed co-authorship of the Chan Works as a matter of copyright law.

63. A substantial justiciable controversy therefore exists regarding Eric's ownership and authorship of the Chan Works. And a declaration from this Court will resolve this controversy.

DECLARATORY JUDGMENT

64. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 63 as if fully set forth herein.

65. Plaintiff is, and at all times intended to be, the sole author of the Chan Works.

66. Plaintiff never intended that Defendant would be a co-author of the Chan Works as a matter of copyright law, nor that she would have the legal rights of a co-author.

67. Plaintiff did not prepare the Chan Works intending that his and Defendant's contributions would be merged into inseparable or interdependent parts of a final work.

68. At the time that Plaintiff created the Chan Works, Plaintiff intended that he would be the sole author of the Chan Works, and that any nominal attribution of the Chan Works to ChanSchatz or Defendant was for business purposes only.

69. To the extent that Plaintiff nominally attributed any Chan Work to ChanSchatz or Defendant, Plaintiff did not intend such attribution as an indication that Defendant was a co-author for copyright purposes.

70. Plaintiff at all times retained artistic control over the Chan Works.

71. Plaintiff alone made independently copyrightable contributions to the Chan Works.

72. To the extent that Plaintiff attributed any Chan Work to ChanSchatz or Defendant, Plaintiff did not intend such attribution as an indication that Defendant made independently copyrightable contributions to the Chan Works.

73. To the extent Defendant made any contributions to the Chan Works, Defendant's contributions were not independently eligible for copyright protection.

74. Plaintiff seeks a declaratory judgment from this Court that Plaintiff is the sole author of all of the Chan Works, and that Defendant is not a co-author of any of the Chan Works.

DEMAND FOR A JURY TRIAL

Under Federal Rule of Civil Procedure 38, Plaintiff respectfully requests a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Eric Chan respectfully requests that the Court enter a declaratory judgment that he is the sole author of the Chan Works, that Defendant is not a co-author of any of the Chan Works, and such other relief as the Court deems just and proper.

Dated: April 26, 2017

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